

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No : HBC 114 OF 2018

BETWEEN

DAYA SHANKAR SHARMA of Lot 3, Wailoku, Tamavua.

Retired

PLAINTIFF

AND

VIJAY PRASAD CHAUDHARY of Cuvu, Sigatoka.

DEFENDANT

Counsel	:	Plaintiff in Person Ms. M. Rakai for Defendant
Date of Hearing	:	06 th June 2023
Written Submissions	:	03 rd July 2023
Judgment delivered	:	12 th September 2023

JUDGMENT

- [1] The parties to this action were two senior citizens. They were close friends at one point in time. According to the Plaintiff the dispute arose on a transfer of a ¼ acre land which belonged to the Defendant situated in Cuvu, Sigatoka.
- [2] The Plaintiff claims that there had been an implied agreement between him and the Defendant to transfer the said portion of the land from a 40 acre freehold land. He states that there had been a Caveat registered on the said land which was within the knowledge of the Defendant and he failed to disclose this while endorsing the agreement between them. As a result Plaintiff claims that he could not proceed with the survey to subdivide his lot. Plaintiff says that he suffered substantial damage due to this failure of Defendant and therefore he claims \$163,540 together with special and general damages from the Defendant.
- [3] The Defendant states that he agreed to give ¼ acre of his property in 1993 to the Plaintiff and it was not in writing. Further Defendant's stance is that the Plaintiff was aware of the caveat which subsequently proceeded to litigation in Lautoka High Court. The Defendant states that the Plaintiff has failed to provide particulars to the damages he said to have suffered.
- [4] By way of a counter claim, the Defendant states that he had been put to unnecessary expense and inconvenience by the Plaintiff by having the same claim filed in the Magistrate's Court. For the financial losses incurred, the Defendant claims \$20,000 from the Plaintiff.
- [5] Parties agreed to the following facts at the pre-trial conference.
 - I. The agreement to sell a property of the Defendant to Plaintiff was a verbal agreement.
 - II. The Plaintiff and the Defendant then entered a written contract on or about 2010.
 - III. The Plaintiff had initially filed a claim at the Magistrates Court in Suva.
 - IV. The Magistrates Court case was struck out.
 - V. The Plaintiff refiled in the High Court of Suva.
- [6] On the day of the trial Plaintiff's learned counsel Mr. Young made a request to withdraw as counsel. The Court made several queries in to the proposed withdrawal and as the

Plaintiff was willing to conduct his trial without Mr. Young, subsequently I have allowed his application.

- [7] At the trial Plaintiff gave evidence and he was cross examined by Ms. Rakai. No other witnesses were called by the Plaintiff. Similarly the Defendant gave evidence during his case. Notably the Defendant's evidence was not subjected to cross examination by the Plaintiff. Having explained the ramifications to the Plaintiff, he decided not to cross examine the Defendant.
- [8] At the trial Plaintiff stated that he received this $\frac{1}{4}$ acre land from the Defendant in exchange of another land which the Plaintiff arranged for him. Details of this 'other land' did not come to light during the trial. Plaintiff relies on a letter written by the Defendant addressed to the Registrar of Titles as the contract between him and the Defendant. It was dated and signed by the Defendant on 16.03.2010.
- [9] The letter which was tendered by the Plaintiff in Court as P-1 addressed to the Registrar of Titles. It states that the Defendant as the owner of the 18 hectares of land known as Malaqereqere situated in the district of Cuvu and Certificate of Title 28084, gives $\frac{1}{4}$ acre [1000 sqm] to the Plaintiff. The location of the allocated portion was marked on a sketch at the bottom of the document. The letter further states that all costs involving surveying of the land to be borne by the Plaintiff and the Defendant has authorized the Plaintiff to enter in to his property and carry on with the subdivision whenever he wishes.
- [10] Plaintiff states that there had been a caveat on the land and it was not declared to him by the Defendant. He says that he came to know about this from the caveator Mr. Anil Sabharwal. According to Plaintiff the Defendant took 9 years to remove the caveat and as a result Plaintiff states that he suffered losses. The Plaintiff relied on exhibit P-2 a document stamped by A. Mishra & Co Accountants & Consultants to itemize the losses under three headings, Direct Cost Incurred, Loss of Income, and Loss Due to Delay in Construction. Total of Plaintiff's losses between 2011-2018 was \$153,340.
- [11] Plaintiff states that he could not build his house on the land allocated due to the caveat.
- [12] During cross examination the Plaintiff said that the initial agreement to allocate this land was verbal and it took place in 1993. However he could not act on the agreement due to non-availability of the Defendant. He said that there was no monetary consideration exchanged between him and the Defendant for this $\frac{1}{4}$ acre plot of land. The Defendant put to him a proposition that the second signature on P-1 dated 05.07.14 was not his. The Plaintiff states that he obtained this signature from the Defendant in 2014. The Plaintiff admitted that he has not provided any receipts or other proof to substantiate his claim on

damages. At the conclusion of the cross examination Plaintiff agreed that he had initially filed this action in the Magistrate's Court but withdrawn it in 2017 to file in the High Court.

- [13] The Defendant during his case stated that his relationship with the Plaintiff goes back to year 1973. He agreed that in 1993 he decided to give ¼ acre to the Plaintiff provided that he bears any additional cost associated in the transfer. The Plaintiff later tried to sell this portion however he couldn't due to the condition of the land as there was no water or electricity. Then the Defendant left Fiji. After some time Mr. Anil Sabharwal called the Defendant to inquire whether he wishes to sell the land. The Defendant expressed the willingness and later he was called by Mr. Sabharwal to inform that there is a buyer. When the Defendant examined the transfer papers he has found that about 6 acres have been left out from the sale. Later it revealed that a forgery had been committed to transfer 6 acres to Anil Sabharwal for a very nominal consideration. The sale of the land did not eventuate.
- [14] The Defendant provided a copy of the caveat [D-3] lodged by Mr. Anil Sabharwal based on the said fraudulent transfer. He also provided a copy of the receipt with his forged signature [D-3 (iii)]. The Defendant stated that he initiated action to remove the caveat and the final orders were granted by Lautoka High Court on 03.11.2017.
- [15] The Defendant stated that he was taken to the Magistrates' Court by the Plaintiff on this same cause of action and later it was withdrawn. He says that he gave the land for free had no other arrangement with the Plaintiff to bear his expenses or damages relating to this agreement to transfer ¼ acre land. The Defendant closed his case with this evidence.
- [16] As earlier mentioned the Plaintiff did not discredit Defendant's testimony.
- [17] The Court needs to consider firstly whether the Plaintiff could maintain a claim against the Defendant based on a verbal agreement. In other words determination of a cause of action against the Defendant. In the event if there is a cause of action, the Court would consider whether the claim is statute barred.
- [18] During the trial neither party disputed the Defendant's intention he had in 1993 to give ¼ acre of his land to the Plaintiff. From the Defendant's evidence it was revealed that initial agreement to allocate was a portion from a crown lease land and later it was changed to the subject land of this action. The Certificate of Title indicates that the Defendant became the owner of this land in June 1994.

- [19] The Plaintiff's position is that Mr. Anil Sabharwal registered a caveat on 05.07.2005 and it was not disclosed to him by the Defendant. From the evidence it is clear that Plaintiff was supposed to bear additional cost involved in the subdividing process. The Court notes that the Plaintiff did not have any hindrance between 1994 to July 2005 to attend to secure his portion. However he did not. The explanation given in Court was that the Defendant was not available. There was no satisfactory evidence provided on any attempts made by him with some definitive material to justify this delay of almost 11 years.
- [20] A contract can be made by word of mouth or by writing or partly by word of mouth and partly in writing. If the contract is made wholly by word of mouth its contents would become a matter of evidence submitted to a judge for adjudication. It must be found as a fact exactly what it was that the parties said. For example in **Smith v. Hughes** [1871] LR 6 QB 597 the question was whether the subject matter of a contract of sale was described by the vendor as 'good oats' or as 'good old oats'.
- [21] If the contract is wholly in writing finding the meaning of what was written presents not much difficulty. In this regard the Courts will interpret the contract within the four corners of the document.
- [22] The Plaintiff refers to the letter written by the Defendant to the Registrar of Titles as their written contract. In fact parties have admitted to this in the Pre-trial conference meeting minutes. I would like to examine the contents of letter further in light of the evidence before me. The letter has been addressed to a third party. The Defendant while giving evidence admitted that this letter was written by him. However he denied that there had been counter signing by the Plaintiff on the day it was written. And the Defendant denied having all other subsequent signatures on the document referring to 05.07.2014. This position was not contested by the Plaintiff during the trial. Therefore I am of the view that the Defendant's actions clearly indicates that he did not construct this letter as a written contract between him and the Plaintiff.
- [23] However the letter can be used to supplement verbal agreement which the Plaintiff is claiming.
- [24] The Plaintiff's claim is that due to the encumbrance on the property he could not get the plot of land promised by the Defendant. The Plaintiff in his evidence did not mention that the verbal agreement was for him to have a piece of land without any encumbrances on it. In fact there had been nothing mentioned to that effect in the letter P-1. Can the Court imply this to be in the agreement?

- [25] An unexpressed term in a contract can be implied by the Court if the parties have intended it at the time of entering into the agreement. Plaintiff may have reasonably expected the agreement to proceed without any hindrance. In fact the Plaintiff had that opportunity between 1994 to 2005. Plaintiff does not provide any reasonable explanation for the delay in failure to secure the plot of land. It appears to me as Plaintiff has abandoned the agreement.
- [26] The Defendant states that there was no agreement between him and the Plaintiff to pay damages. He states that the caveat was not his fault. It was done by a third party on a forged document where the Court intervened to remove. Placing of the caveat was subsequent to the verbal agreement between the parties. It was beyond Defendant's control. However the Defendant has taken appropriate measures to remove it. Hence I am unable to find the whole situation of placing the caveat as breach of agreement by the Defendant. During the period of the caveat the agreement had only become conditional.
- [27] For the findings aforementioned I am of the view that there is no cause of action against the Defendant.
- [28] On the counter claim, the Plaintiff has withdrawn his claim in the Magistrate's Court within a year from filing the claim. It may have been due to lack of jurisdiction. In any event the Defendant has not established the financial losses and damages incurred by him.
- [29] For the foregoing reasons Court makes following orders.

ORDERS

1. Plaintiff's claim and the Defendant's counter claim struck out.
2. Plaintiff to pay \$1000 (one thousand dollars) as cost of this action to the Defendant within 21 days of the judgment.




Yohan Liyanage
JUDGE

At Suva on 12th September 2023